

335.0074

lease of MTF when sold to  
lessor, who then leased and  
assigned to MTF for sale.

Auditing

April 12, 1978

Tax Counsel (JEM) - Headquarters

This is in response to your memo of February 8, 1978.

It appears that \_\_\_\_\_ is in the business of leasing vehicles which qualify as mobile transportation equipment. When a customer comes to \_\_\_\_\_ to lease such a vehicle, \_\_\_\_\_ purchases the vehicle tax-paid from a dealer, paying the dealer from its own funds. It then leases the vehicle to the customer and assigns the lease to a bank. At this time, the bank issues a purchase order to the dealer showing a purchase price in excess of the amount actually paid by \_\_\_\_\_. Pursuant to instructions on this purchase order, the dealer registers the vehicle with DMV showing the bank as registered owner, c/o the customer-lessee, and also showing the bank as the legal owner.

At the end of the lease period, the customer-lessee has an option to buy the vehicle. If he does not exercise this option, \_\_\_\_\_ then has an option to buy.

You ask whether this transaction is merely an assignment of a lease of a tax-paid vehicle, with no additional tax due, or whether there is a sale of the vehicle from \_\_\_\_\_ to the bank, with additional tax measured by \_\_\_\_\_ profit on the transaction.

Although \_\_\_\_\_ is never shown as the registered or legal owner on DMV records, we are of the opinion that there is a sale of the vehicle from the dealer to \_\_\_\_\_. This is evidenced by the fact that \_\_\_\_\_ purchases the vehicle with its own funds, and also by the fact that \_\_\_\_\_ exercises incidents of ownership over the vehicle when it leases the vehicle. In addition, there is a sale of the vehicle from \_\_\_\_\_ to the bank, as evidenced by the fact that the bank is registered as the legal owner while \_\_\_\_\_ retains only an option to buy.

JEM

April 12, 1978

Normally, if a taxpayer purchases mobile transportation equipment from a dealer for the purpose of leasing it, there is a retail sale of the vehicle. If the taxpayer subsequently sells the vehicle subject to the lease, there is a second retail sale of the vehicle. Both sales are subject to tax, unless otherwise exempt.

Under the circumstances of this case, however, it appears that the original sale of the vehicle from the dealer to \_\_\_\_\_ is a sale for resale to the bank. \_\_\_\_\_ lease of the vehicle, the assignment of the lease, and the resale of the vehicle to the bank constitute a single, integrated transaction. Accordingly, the lease should not be regarded as an intervening use of the vehicle. The original sale from the dealer to \_\_\_\_\_ is therefore not subject to tax.

The second sale of the vehicle, from \_\_\_\_\_ to the bank, is subject to tax. The exemption authorized by section 6282 of the Revenue and Taxation Code does not apply, since \_\_\_\_\_ is registered as a dealer with the Department of Motor Vehicles. The measure of tax is \_\_\_\_\_ gross receipts from the sale, with appropriate deductions for tax-paid purchases resold.

The above analysis is based on the facts as they have been presented. If subsequent investigation reveals that the actual facts are different, the analysis may be changed.

JEM/vs